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In The

# Supreme Court of the United States

October Term, 1983

ERNEST WALTER HOMENS,

*Petitioner,*

vs.

STATE OF MARYLAND,

*Respondent.*

## PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

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18/28



## QUESTION PRESENTED

The question presented to this Court is whether the conduct of an assistant state's attorney in the prosecution of Petitioner violated the terms of a negotiated plea agreement to his substantial prejudice, thus denying him his constitutional right to due process of law.

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OCTOBER TERM, 1983

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PETITION FOR A WRIT OF  
CERTIORARI TO THE COURT OF  
APPEALS OF MARYLAND

\_\_\_\_\_  
OPINION BELOW

Petitioner's Application For Leave  
To Appeal was denied in an unreported  
opinion by the Court of Special Appeals  
of Maryland, Misc. No. 29, September  
Term, 1983, filed on April 6, 1984.

## JURISDICTION

The denial of Petitioner's Application For Leave To Appeal by the Court of Special Appeals of Maryland was filed on April 6, 1984. Section 12-202 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland precludes further review of his Application by the Court of Appeals. This petition was filed within sixty days of the date of filing. Petitioner maintains that this Court's jurisdiction is invoked under 28 U.S.C. Section 1257 (3).

### CONSTITUTIONAL PROVISIONS, STATUTES AND RULES OF PROCEDURE

United States Constitution, Amendment Five

United States Constitution, Amendment Fourteen

Annotated Code of Maryland, Courts and Judicial Proceedings, Section 12-202

Maryland Rules of Procedure, Rule 733

Maryland Rules of Procedure, Rule 1096



## STATEMENT OF THE CASE

On July 14, 1983, Petitioner was tried in the Circuit Court for Anne Arundel County, Maryland, Honorable James C. Cawood presiding, on Criminals No. 27,612. The indictment charged the Petitioner with distribution of a controlled dangerous substance and related charges. The assistant state's attorney assigned to the case was Steven R. Beard, Esquire.

At trial, a negotiated guilty plea to the distribution count, pursuant to Maryland Rule of Procedure 733 was tendered by Petitioner. The terms of the plea agreement were presented to Judge Cawood and, following questioning of Petitioner regarding the voluntariness of his guilty plea and a reading of a statement of facts to support the plea, Judge Cawood accepted the plea and the terms thereof. The terms of the plea

were that the State would nolle prosequere the remaining counts of the indictment, would not object to the Petitioner remaining on personal recognizance pending sentencing, and would remain silent at sentencing.

Between trial and sentencing, this case was reassigned to assistant state's attorney Patrick Bell, Esquire. Petitioner testified in his own behalf at sentencing and told the court that his involvement in the illegal transaction had been minimal, although acknowledging that his involvement amounted to a crime. This mitigation had been summarily presented at the trial of Petitioner, but was raised in more detail at sentencing. The state was well aware of Petitioner's position on the facts of the case at the time of the entering of the negotiated plea.

At the conclusion of Petitioner's direct testimony, Mr. Bell, in violation of the terms and spirit of the plea agreement, launched into a scathing line of cross-examination of Petitioner by which he attempted to convey to the court that Petitioner was a regular and frequent dealer of controlled dangerous substances. Nothing in the statement of facts or the presentence investigation report gave any indication of that fact. By the method and content of Mr. Bell's cross-examination, he violated the terms of the negotiated plea agreement whereby the State agreed to remain silent at sentencing. Petitioner was subsequently sentenced to a term of incarceration, which he believes he would not have been, but for the conduct of the State.

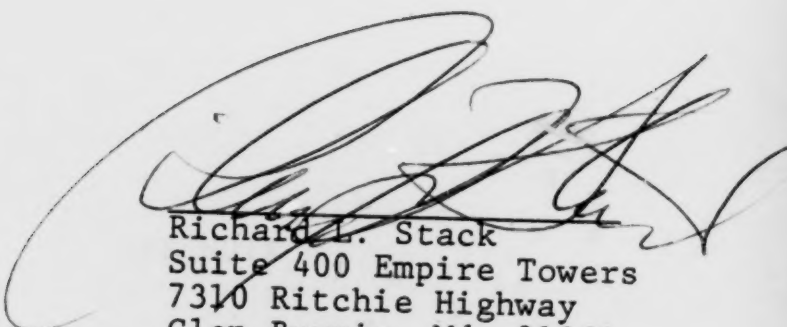
The condition of the plea agreement violated by Mr. Bell was a proper one in accord with Maryland Rule 733 a. 5.

This question was first raised, pursuant to Maryland Rule of Procedure 1096 in Petitioner's Application For Leave to Appeal. Said Application was filed timely.

#### ARGUMENT

This action by the State violated Petitioner's right to due process as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution. See Wolf v. Colorado, 338 U.S. 25, 69 S.Ct. 1359, 93 L.Ed. 1782( ). This misconduct of the prosecutor clearly resulted in substantial prejudice to Petitioner. See Wilhelm v. State, 272 Md. 404, 326 A.2d 707(1974).

Had Petitioner known that the terms of the negotiated plea agreement would not be met, he would not have entered a plea of guilty. Therefore, his plea of guilty was not voluntary.



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## APPENDIX A

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

Application for Leave to Appeal

Misc. No. 29

September Term, 1983

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GUILTY PLEA

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ERNEST WALTER HOMENS

V.

STATE OF MARYLAND

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Gilbert, C.J.  
Adkins  
Bloom

JJ.

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PER CURIAM

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Filed: April 6, 1983



Ernest Walter Homens seeks leave to appeal from a guilty plea entered in the Circuit Court for Anne Arundel County (Cawood, J.). The application is devoid of merit, and it is denied.

APPLICATION FOR LEAVE TO  
APPEAL DENIED

## APPENDIX B

## CONSTITUTIONAL PROVISIONS

### United States Constitution, Amendment Five

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### United States Constitution, Amendment Fourteen

#### Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## STATUTES

Annotated Code of Maryland,  
Courts and Judicial Proceedings  
Section 12-202. Exceptions

A review by way of certiorari may not be granted by the Court of Appeals in a case or proceeding in which the Court of Special Appeals has denied or granted:

(4) Leave to appeal from a final judgment entered following a plea of guilty in a circuit court.

## RULES OF PROCEDURE

Maryland Rules of Procedure,  
Rule 733. Plea Agreements

### a. Conditions for Agreement

The defendant or his counsel may enter into an agreement with the State's Attorney to plead guilty or nolo contendere on any proper condition including one or more of the following conditions:

5. That the State's Attorney will recommend, not oppose, or make no comment to the court with respect to a particular sentence, disposition, or other judicial action;

Maryland Rules of Procedure,  
Rule 1096. Judgment Following Guilty Plea--Application for Leave To Appeal

a. Application

1. How Made--Time for Filing

Application for leave to appeal to this Court from a final judgment entered following a plea of guilty in a circuit court shall be made by filing the application with the clerk of the lower court within thirty days from the entry of the judgment appealed from.